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DISCOURSE

UPON
INFORMATIONS
AND
INFORMERS.



LONDON:

Printed for G. WOODFALL, at the King's
Arms, Charing-Cross.

(Price Sixpence.)

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DISCOURSE, &c.

WE have heard of late so much about *Informations and Informers*, and every Method has been made use of, in order to stir up the Resentment of the People of this Nation, remarkable for their good Nature, against the Crime itself, and those that are supposed to be guilty of the Practice of it ; it may not therefore be unreasonable to offer some Considerations with regard to the Meaning of *those Words*, that they to whom they are addressed may not be imposed upon by a wrong Use of them, and be enabled to keep clear of making a *wrong Judgment*, which is the never-failing Consequence of annexing wrong Ideas to words.

The Happiness of Society depends entirely on every Man's doing his Duty in his Station ; and for that Purpose, the Laws, and those that

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watch

watch over the due Execution of them, are supposed to be always looking out, that the Safety of the Public be not endangered by the Excesses or other Irregularities of Individuals. To these Guardians of Society, all Helps are allowed, and subordinate Ministers appointed, who, like so many Eyes and Ears, are to watch, and report to the supreme Power, whatsoever is transacted at a Distance, that may be detrimental to the whole. These like so many advanced guards, are to give Notice of every Approach and Operation of the Enemy. But this is not the Duty of Officers *only*, who are appointed to watch over the Public Safety. It is also a Duty incumbent upon every Man, as a Part of Society, to give Notice to the Magistrate of whatever falls within his Observation, that may any ways affect the Constitution of that Government he lives under, by disturbing its Tranquility, or weakening its foundation, or even tending by seditious Practices to create a Dislike of its legal Governors. Thus far every Man, as a Member of Society, I believe will allow to be right, nor can any one blame a Proceeding of this sort, so essential to Government, and so thoroughly justifiable by the public Utility attending it.

But useful and necessary as it is, when properly directed, and under just Regulations, yet there may be certain Cases, wherein these
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and such like Maxims salutary in themselves, by improper Application may be the Bane of Society, and the Destruction of that Peace and Order, that in their original State they were designed to protect and support. It is in this, as in many other Instances, where the greatest Evils arise from the Abuse of the best Means; that Hypocrisy makes her Advances under the Appearance of Virtue, and employs the most approved Measures, to carry on Ends the most detestable and iniquitous. Where then Intimations are conveyed to the supreme Power, that Machinations are carried on by a Person or Persons, or Bodies of Men, of dangerous Consequence to the public Weal, which are either false in fact, or suggested upon ill-grounded Suppositions; where Informations are made, only for the sake of repairing broken Fortunes, or satisfying personal Revenge, or where the Accusation of Innocence may be contrived to gratify the Cruelty of a Tyrant, or the Violence of despotic Power; there Informations, which in the first Case would be public Virtue, in these last Instances, would become the Pest of Society, and highly deserve that Character that *Tacitus* gives of the Informers in *Tiberius* his Reign; *Delatores, hominum genus publico exitio, repertum.*

I have said thus much for the sake of making this Remark, that we may hence see, that Informers and Informations are of two Sorts,

and to be considered under two Significations; first, as the *laudable and necessary Means* of defending and supporting good Governments against the open or concealed Enemies of it; and secondly, as the detestable Instruments of lawless Dominion and arbitrary Power. Having marked down this Distinction, we may observe that the Word *Informer* has a good Signification, as well as a bad Sense belonging to it, though indeed the universal just Abhorrence of that Crime has been the Cause that that infamous Term has been appropriated to the *false Accuser only*, though in Strictness of Speech, it relates likewise to just Accusations. For we see, that those Means whereby Courts of Judicature arrive at the Knowledge of illegal acts, are called *Informations*, and the Accuser an *Informant*, not as a Term of *Reproach*, but as a Designation of an useful Member of Society. And indeed, without Accusation upon proper Occasions (and Informations are no more) without such Methods as these to repress the Disorders of Offenders against the public Weal, how could the Community subsist? What Help in Government, if you take away all Means of knowing, and consequently punishing the Transgressor?

We all know that Robbery, Perjury, Murder, are crimes of the most fatal Tendency, if they be suffered to go unpunished; but unpunished and even undiscovered they must go,
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if we have not Recourse to Accusation, and in this Case the Accuser is an *Informer*. What! shall we suffer a Villain to escape, and perhaps prepare himself to practice next upon ourselves, only because we will not *accuse*, i. e. *inform*? Undoubtedly no Man will hesitate in these Cases, to appear as such, and do his utmost to procure the Safety of the Public, by the Punishment of those that endanger it. I mention this, only to shew, that there are Cases that every Day happen, in which we may laudably exert ourselves as Accusers, or in other Words, Informers of the Government, in what Parts the Enemies of it are concealed. Let me ask the impartial Reader, for such I would wish him to be, would he scruple to appear as an *Accuser* of such sort of Criminals, as have been mentioned, or even of any lesser Sort, where the Publick may suffer by the Concealment of them? Undoubtedly he would answer, No. If I ask him why he would do so, he would answer because it is my Duty by the Laws of Nature, which are also the Laws of Society *. For there are *internal Laws in Society*, which arise from the *Nature* of it in general, and out of the several Connections out of which it is formed,

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* Omnes tam milites quam alii qui sunt quindecim annorum et amplius jurare debent quod utlagatos, murtheriores, robbatores, burglatores, non receptabunt nec eis consentient, nec eorum receptatoribus, et si quos tales noverint illos attachiari facient. Bracton, lib. iii. Tract ii. Cap. i.

antecedent to any municipal or positive laws that are accommodated to particular Communities. Having thus far seen our Duty, as Parts or Members, to endeavour the Security and Preservation of each other; for *that* in reality is the Safety of the Community, seeing that public Welfare when it comes to be analysed, is no more than the Well-Being of Individuals; let us now take a Step farther, and enquire how far that Duty that requires us to watch over the Welfare of Society in general, against all Disturbers of its Order and Happiness, extends its Obligations on us, with regard also to the Safety of the supreme executive Power, be that lodged where it will. It is a Maxim that is implied in the Idea of Government, that there must be an absolute Power vested somewhere. And as human Institutions for the most Part have been formed upon the Plan that Nature has prescribed, especially in such Cases, where any Analogy was discoverable; the Oeconomy of the human, was a good Pattern for the Conduct of the Body Politic; and the Dependency of the several Motions of the Parts and Members on the Head, was too useful a Hint, not to be copied into civil Administration; for as it was necessary in the one Case, for the Members (whose Offices however various, tended to one End, namely, the Preservation of the whole) to be directed and controuled by the Head; as the Part the most noble and capable
of

of that Service ; so in the other, it was for the Good of Community, that the several Members constituting Society, should be subject to such a Head, as should be judged by common Consent, to be worthy and able to direct their Motions, for the public Utility, and restrain such their Excesses, as might endanger the Harmony arising from the due Execution of the Powers of each Individual.

There is great Propriety in this System, and therefore it is sanctified by the Approbation, and demands Reverence from the Admission of it, into all civilized Nations. And as this Disposition took its Rise principally from the Utility, that would thence follow to the Public ; there is therefore a Necessity, that the Preservation of *the ruling Part*, should be the Object of the public Concern, at least, as much as the due Regulation of the subordinate Members; for although the Offices and Duties incumbent upon them might be discharged with good Effect, yet if the supreme Power was to be left exposed to any Attempts, that might be prompted by the Ambition or Restlessness, or the Disaffection of turbulent Spirits against it, with Impunity ; such Licentiousness must produce Convulsions in a State, that must soon end in Anarchy and Confusion.

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To prevent which, all legal Governments have provided, that the Safety of the supreme executive Power, should be secured by all the Defence that Law can give it ; well knowing how much the Happiness of the *Governed* is connected with that of the *Governor*. This is too confessed to need a formal Proof ; and therefore we will proceed to consider how far, this Safety of the supreme Power, has been provided for by Laws.

And first of all, we must mention the *Laws of Nature*, i. e. those *unwritten Laws*, that tacitly subsist in every Community, by which the Connections of the *Governor* and *Governed* are so interwoven, that their Interests become one and the same Thing ; for how can the Governor give Vigor to the Laws, and exert himself with Effect, if he be not supported in his Administration ? How can he protect others, if he himself be the only Person unprotected in the State ? Therefore, by the Nature of Government and the Laws arising thence, the Safety and Protection of the *supreme Power*, is the first essential Fundamental of Government.

But as *unwritten Laws*, lying hid in the Constitution of Things, are not a sufficient Direction to the grosser Conceptions of Mankind ; so, for that Reason, every State has thought

thought proper to re-promulge this *unwritten Law*, by putting it at the Head of their civil Institutions ; that no Man may pretend Ignorance of that Law, by which he is so solemnly bound.

Upon this Law of Nature is founded that Obligation, which in our Constitution is called Allegiance or Ligeance, from *Ligare, to bind* ; by which we engage ourselves to support and defend the supreme Power, which tacitly or openly stipulates to protect us. Ligeance, *says Skene*, is the mutual Bond and Obligation between the *King* and his Subjects, whereby they are called his *liege* Subjects, because they are bound to *obey* and *serve* him ; and he is called their *liege Lord*, because he should *maintain* and defend them. Subjects therefore, are bound to *obey* and *serve* the King, by their Ligeance : To *obey him*, by willingly and chearfully submitting to the *Laws of the Land*, which are also called the *King's Laws* ; to *serve him*, by supporting his Authority, and defending his Person ; and this defending his Person is not to be done *only* by guarding him from open Violence, but also securing him against the Attacks from the masked Batteries of Disaffection. In this Case what is the Duty of a Subject ? in Conjectures of such fatal Tendency how is he to discharge his Allegiance, and *serve the King*, but by discovering and making known such malignant Murmers, as

are growing up apace into unjustifiable Actions. This is a Duty he owes every Man in the Community; and notwithstanding the ugly Names thrown out by those whose Interest it is to discredit a Conduct, that would lay open and expose their evil Purposes, yet it is the Duty of an honest Man, a good Citizen and a good Christian, to support good Government, by discovering those Measures, that tend to overturn it. Thus far the Obligation of the Law of Nature, or natural Ligeance, as the Lawyers call it. We will now go on to consider it as reduced in this Kingdom, to a written, municipal, and positive Law.

Sir *Edward Coke* in his Reports, lib. vii, *Calvin's Case*, says out of *Lambert*, that the Oath of Allegiance used at the Sheriff's Tourne and Leet, was first appointed by King *Arthur*. — *Quod omnes principes, comites, procures, milites et liberi homines debent jurare, &c, in Folkemote, et similiter omnes procures regni et milites et liberi homines universi totius regni Britanniae facere debent in pleno Folkemote fidelitatem domino regi*—*Hanc legem invenit Arturus, qui quondam fuit inclitissimus rex Britonum*—*hujus legis autoritate expulit Arturus rex Saracenos et inimicos a regno et hujus legis autoritate Ethelredus rex uno et eodem die per universum regnum Danos occidit.* *Lambert* in regis *Edw.* leges, cap. 35. and *Spelman Gloss*, under the Word *Folkemote*.—But besides

fides this Oath of Fealty to the King, there is another Particular very remarkable in the Passage of the Laws of *Edward the Confessor*, just preceding that Clause now quoted —

Statutum est quod ibi debent populi omnes et gentes universæ singulis annis semel in anno scilicet, convenire, scilicet in capite calendarum Maij, et se fide et sacramento non fracto, ibi in unum et simul confederare et consolidare, sicut conjurati fratres ad defendendum regnum, uno cum domino suo rege, et terras et honores illius omni fidelitate cum eo servare, et quod illi domino suo regi fideles esse volunt.—By which it appears, that it was not sufficient to swear Fealty to the King, but that every Member looked upon himself so concerned in the Safety of his Person, as to require an Oath of Confederacy from each other, to defend him ; and which, for the greater Security, they were obliged to repeat every Year on the Calends of May.

This Oath of Fealty to the King we find in the next Reign but one to the Confessor; in the Charter of *Will. I.* the second Article is, *de fide et obsequio erga regem. Statuimus etiam ut omnes liberi homines fœdere et sacramento affirmant quod intra et extra regnum Angliæ Willielmo regi domino suo, fideles esse volunt.* Upon which we may observe, that the Duty of a Subject to his Sovereign was comprehended under the ge-

neral Word *Fidelity*, as including all possible Cases, where the King might stand in Need of his lawful Assistance, and which are sum'd up under these six Heads by *Fulbert* Bishop of *Charterres* *, *Incolume, tutum, honestum utile, facile possibile*. But as this Word *Fidelity*, was perhaps thought too general (and there is some Reason to think so, from the Precision in the Oath, as it was altered afterwards) *Edw. I.* ordained, that the former Oath, as to the Matter of it, should be more explicit, and accordingly it is set down in *Britton*, cap. 29. in these Words. *Jeo A. de ceo jour en avaut, jerrai feal et leal, a notre Seigneur E. roy Dengleterre et ses beires, et foy et leatlé les porteray de vie et membre et de terreine honour; et que Jeo lour mal, ne lour damage, ne sayeray ne orray, que Jeo ne les defendray a mon poyer; si moy eyde Dieu et ses seintes*; the Form of which is preserved still, and is that which is made Use of in the Courts Leet, in these Words,
 “ You shall swear, that from this Day for-
 “ ward, you shall be true and faithful to our
 “ Sovereign Lord King *George*, and his Heirs,
 “ and Truth and Faith shall bear of Life,
 “ Member and terrene Honour; and you
 “ shall neither know nor hear of any Ill or
 “ Damage intended unto him, that you shall
 “ not defend; so help you Almighty God.”

What

* *Fulberti Episcopi Carnotensi, Epistola ad Aquitanorum Ducem*. Apud Spelman, voc. Fideles.

What the former Laws expressed by *Fidelity*, *Edw. I.* explained more at large, by descending into Particulars, and shewing from the feudal Oath, in what Cases this *Fidelity* was to be shewn. It was bearing *Fealty* and *Loyalty*, *de vie et Membre et de terrene Honour*, that is, says Sir *Ed. Coke* * until the letting out the last Drop of our dear Heart's Blood. But with Deference to such great Authority, I cannot think that those Words relate to the Subject, but to the King whom you swear to defend in all Cases, relating to his *Life, Member, or terrene Honour*; and I think, I am well founded in this Interpretation from the Authority of the *Liber Feudalis*, lib. ii. tit. 5. where it speaks of the Oath of Fidelity of a Vassal or Domestic to his Lord. *Ego juro quod nunquam scienter ero in consilio vel auxilio, vel in facto, quod tu amittas vitam vel membrum aliquod, vel quod tu recipias in persona aliquam lationem vel contumeliam; vel quod tu amittas aliquem honorem.* Here we see that the Words *Life, Member and terrene Honour*, related to the King, who was to be defended against any Attempts in those Respects. This Construction of Sir *Ed. Coke*, seems to have been adopted by some Lawyers, and if I am not mistaken, is particularly discoverable in the Oath appointed for the *Scotch Nation*, 1 *Geo. I.* whereby they sincerely and faithfully

* *Coke's Reports, Calvin's Case*, lib. vii. p. 7.

faithfully promise and engage, that they will with *Heart and Hand, Life and Goods*, maintain and defend his Majesty's Title and Government, &c. where *Heart and Hand, Life and Goods*, seems to be an Explication of, *de vie et Membre et terrene Honour*, applied to the Subject; but a sufficient Authority has been produced above, to prove that those Words ought to relate to the Life, Members, and Honour of the King that the Subject by this Oath swore to defend. But as this was not the only Way that the Safety and Authority of the King might be endangered, nor outward Force the only Violence that might be offered to Princes; therefore it was here provided also, that all secret Machinations and Movements of private Disaffection, which is what is called in the feudal Oath, *læsionem et contumeliam*, might be discovered; accordingly it follows, *et que Jeo lour mal, ne lour damage ne Saveray ne orray, que Jeo ne le defendray amon poyer*; and *I will not know or hear of any Ill or Damage intended unto him, that I will not defend him from, to the utmost of my Power.*

But what is the Nature of *that Ill and that Damage*, that the Subject swears to defend him from, to the utmost of his Power; against open Violence he is to defend him in open Arms; the other Defence therefore can be

be of no other Kind, than a Discovery of all such Practices as tend to propagate Discontent, and alienate the Affections of his People from him, by false Suggestions, spiring up Disobedience to his Laws, and legal Authority, and abetting the Cause of a Competitor to his Crown.

This and such like Behaviour is substantial Ill, and high Damage to the Sovereign, therefore the Law, I mean the common Law of *England*, which is what I have cited upon this Occasion, out of *Britton*, who collected it, by Order of *Edw. I.* does require an Oath from every Subject to discover all treasonable Speeches, or whatever may hurt, injure, or dishonour the King, which may impede him in exerting his sovereign Power with due Effect in the Administration of Government.

Shall then a Discovery in this Case, thus required by Law and enjoined under the Obligation of an Oath, shall this Discharge of Duty to the Public be attended with greater Infamy than the most flagrant Breach of the Laws? Shall the infamous Name of Informer that *properly* belongs to *false Accusers* in the worst of Times, under the most despotic Governments, and for the worst of Purposes, be wantonly fixed upon Men, whose greatest Crime, it seems, is, that they are Friends to those Laws and that Government, that their

their Enemies, are ever contriving to overturn. Let me seriously ask these Gentlemen who join in this Cry of Calumny and Defamation, more out of Levity and Inconsideration, than ill Intention ; let me ask them, whether upon their Truth and Honour, they think those Men, whose Discoveries tend to the Stability of Government, and the Welfare even of themselves, as included in the Peace of Community, are the Persons meant by *Tacitus* by the Word *Delatores*, and whom he justly calls, *hominum genus publico exitio repertum*. Let them answer me, rather let them answer themselves ; can that be called *Publicum exitium*, a Destruction of the Public, that is enjoined by the public Laws ? Is there no Difference between a legal Accuser, and a pestilent Informer ? The Distinction I think has been already sufficiently made appear ; and therefore we may honestly conclude, that a Conduct of this sort, is so far from being criminal, that it is highly laudable, as arising from a Sense of Duty to Society, and proceeding from the Obligation of an Oath.

We have thus far seen what is required from us by the Laws of Nature and the *common Law* of this Land, relating to the Question before us, let us now proceed to consider how far legal Informations become our Duty, by *the Statute Law* of this Realm.

After

After the many Attempts of the Papists to overthrow the Constitution of this Nation both in Church and State, particularly by the Gunpowder-Plot ; it was thought necessary by the Parliament, for their better Security, to frame an Oath, to be taken by every Subject, “ that they would bear Faith and true Allegiance to his Majesty, his Heirs and Successors, and him and them defend to the uttermost of their Power, against all Conspiracies and Attempts whatsoever, which shall be made against his or their Persons, their Crown, and Dignity ; and that they would do their Endeavour to disclose and make known to his Majesty, all Treasons and traitorous Conspiracies, which they should know or hear of, to be against him or any of them.”

The Purport of this Oath is to the same Effect, with that required by the common Law ; but because the Oath of Fealty was confined chiefly to the Suitors at the Leet ; the Parliament here extended it *to all Persons*, who before they took upon them *any public Place, Employment, Office, or Profession*, might give the Community what was thought to be the highest Security that they would *not endanger its Tranquillity*, by practicing *against the King, his Crown and Dignity.*

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They likewise swore that they would disclose and make known all Treasons and traitorous Conspiracies against him, that came within their Knowledge.

And because the Universities of this Kingdom, have in a great Measure the Power of forming the ductile Minds of their Pupils and Opportunity of instilling such Principles as may for ever after determine their Conduct ; it was by this Act provided, that among other Persons there specified, the Vice-Chancellor and Heads of Houses, Proctors, and Beadles, should take this Oath of Allegiance in the Convocation House before the Senior Masters.

Every Person promoted to any Degree in School, before the Vice-Chancellor in the Congregation House.

All Fellows of Houses and Scholars of Halls or Colleges, being under the Degree of a Baron, before the Head of the House, and in the open Hall.

These Precautions were then thought necessary to be taken both by Way of Assurance of the Fidelity of the Governors, and in order that the Youth under their Care, might not be tainted with such Impressions, as growing up with them into Maturity, might prove dangerous to the King and his Government ;

vernment; " for the Actions of Men, as
 " *Hobbes* rightly says, proceed from their Opi-
 " nions, and in the well-governing of Opinions,
 " consisteth the well-governing of Men's Ac-
 " tions in order to their Peace and Concord, *Le-*
 " *viathan* cap. 18." We must not forget, that
 one Part of their Oath, was *to disclose and make*
known unto his Majesty all Treasons, and treason-
able Conspiracies, which they shall know or hear
of, to be against him. Which, if they had con-
 scientiously complied with, I am afraid, in our
 Days, they would have been cried out upon as
Informers.

However, the Oath appointed by this Law,
 has continued through the several Reigns
 from that Time to this, with very little Altera-
 tion.

By the last Form of it, 1 *Geo. I.* the Words
 are the same with those of *James I.* but with
 this material Addition; " And I do faith-
 " fully promise, to the utmost of my Power,
 " to support, maintain, and defend the Suc-
 " cession of the Crown, against the Person
 " calling himself *James the Third, &c.* and all
 " other Persons whatsoever, as it stands li-
 " mited to the House of *Hanover*, being Pro-
 " testants."

There is no Man in *Great Britain* of any
public Place, Employment, Office, or Profes-

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sion,

sion, but has taken this Oath with the Addition ; and therefore, no Man under the fore-mentioned Description, but what is solemnly bound by it. It is therefore, extreamly strange, that Men through Passion should so far forget the Interest of Society, and that of themselves so closely connected with it, as to give the most infamous Names of Reproach, to such a Conduct, as they must confess to be required even from themselves, by all Laws human and divine.

It is not the Design of these Sheets to reflect on any Person or Body of Men, or to answer any Invectives of Party. But it is a dispassionate Call to all those into whose Hands this little Tract may fall, soberly and candidly to consider with themselves, “ whether a Man
 “ that is sworn to bear Faith and true Allegiance to the King ; to defend him to the utmost of his Power, against all Conspiracies
 “ and Attempts whatsoever ; to disclose all Treasons and treasonable Conspiracies, that
 “ he should hear of, against his Person, Crown and Dignity ; that promises likewise upon
 “ his Oath, to support, maintain, and defend the Succession of the Crown in the House
 “ of *Hanover*, against a Person calling himself
 “ *James the Third*, and all other Persons
 “ whatsoever :” and acting according to the Tenor of that Oath, can be thought really to incur the Guilt, and deserve the Name of
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an *Informer*, in the worst Sense of that Word?

But if any Difficulty should arise in making a Judgment upon the Case; I shall add a Solution of a Case of Conscience, given by Bishop *Hall* on this Question in Point. The Question is asked *whether, and in what Cases, am I bound to be an Accuser of another?* Resolutions and Decisions, Case vii. Decad. 2.

The Bishop answers, and shews in what Instances it is lawful so to do; then proceeds to the following Case.

“ If in the Case of a Crime; intended, you
 “ have secret but sure Intelligence, that a
 “ bloody Villain hath plotted a Treason against
 “ the sacred Person of your Sovereign; should
 “ you keep this Fire in your Bosom, it might
 “ justly burn you; whether therefore it be for
 “ the Discovery of some horrid Crime done,
 “ or for the Prevention of some great Mischief
 “ to be done; you must either be an Accuser
 “ or an Accessary.

“ The *Obligation to accuse* is yet stronger,
 “ where your former *Vow or Oath* hath pre-en-
 “ gaged you to a *just Discovery*; you have
 “ sworn to maintain and defend his Majesty's
 “ Royal Person, State and Dignity, and to
 “ make known those who wilfully impugn it:
 “ If

“ If now you shall keep the wicked Counsels
 “ of such wicked Designments, as you shall
 “ know to be against *any of these*, how can
 “ you escape to be involved in a Treason lined
 “ with Perjury ?”

This is a Decision, so reasonable and so plain,
 that it needs no Comment, and therefore I
 shall leave it upon the Consciences of those
 Men, who, to gratify the Rancour of Party,
 scruple not to scatter their Firebrands, *and call*
Men, and venerable Bodies of good Men, a So-
society of Informers, because they have testified
 a Dislike, and shewed an Abhorrence of those
 pestilent Principles, that notwithstanding all
 the cold Protestations of Loyalty from that
 Quarter, must infallibly disturb, though, I
 trust will never have the Power to destroy, the
 present happy Establishment.



F I N I S

